IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.362 OF 1989

Tukaram Pandurang Matekar ...Appellant

Vs.

1.The Head Master,
Sant Dnyaneshwar High School,
at present V.G. Mane High School

2. The Education Officer,
Education Section,
Zilla Parishad,Satara ...Respondents

Mr. S.M.Dange with Mr.L.T.Satelkar for the Appellant
Ms Anita Patil i/b Mr.Sandeep Ghogare for the Respondents.

CORAM: A.S.OKA, J.
DATED: MARCH 23,2005.

ORAL JUDGMENT:

1. This Second Appeal is admitted on 1st August 1989. While admitting the Appeal, this Court observed that ground Nos.1 and 2 of Memorandum of Appeal are the substantial questions of law which read thus :

(1) That the substantial question of law that arises in this Second Appeal is whether violation of the government directives given in the Government Resolution under Grant in-Aid-Code can give rise to file a civil suit by a person whose civil and legal rights are infringed as a result of such violation.

(2) That the other substantial question of law arises in this Second Appeal is whether Government Resolution

and Government Notifications issued for regularising Grant-in-Aid Code is merely an administrative order or a direction to the parties for obeying the same or can be treated as mere administrative orders and guidelines, which may or may not be complied with.

2. I have heard the learned Counsel appearing for the parties. For the purpose of appreciating the submissions made by the Counsel, it is necessary to refer to the facts of the case in brief.

3. The Appellant is the original Plaintiff. The Appellant-Plaintiff is under Graduate and is holding S.T.C.Diploma. He was appointed in Sant Tukaram High School, Karad as a trained teacher. The said school was run by Swami Vivekanand Institute. The date of his appointment was 1st August 1968. Sant Dnyaneshwar High School is also a school run by the said Swami Vivekanand Institute. In the year 1970 the Appellant was transferred to the said Sant Dnyaneshwar High School as a trained teacher. The appointment of the Appellant in the service was confirmed in the said school on 1st August 1970 and since then he was working as a permanent teacher in the said school. While he was serving in the said school, on 4th May 1975 he suffered an accident and his one leg was fractured. The Government of Maharashtra closed down 11th Standard classes from secondary schools as a result of a new education pattern and accordingly Notification dated 5th

February 1975 was issued. There was a Government Resolution dated 14th March 1975 issued by the State Government by which schools were directed to make categorisation of the teachers in categories A, B and C and ascertain surplus teachers as a result of closing 11th Std. classes. The Management was required to submit the list of the surplus teachers to the education Officer. The case of the Appellant is that though he was not rendered surplus, he was declared as a surplus teacher by the Respondent No.2 as well by the Respondent No.1. As a result of the said declaration he was transferred to Mudhoji High School,Phaltan. The case of the Appellant is that when he went to the said school at Phaltan on 20th July 1977 he was not allowed to join the duty. His case is that all the classes of the said school were on the first floor and due to his physical handicap he was not able to climb the staircase. In the meanwhile, the relieving order was issued by the Head Master of Sant Dnyaneshwar High School. His case is that Mudhoji High School did not accept his services. Therefore, legal notice was issued and therefore the suit is filed.

4. The Defendant No.1-Education Officer who is Respondent No.2 contested the suit by filing written statement. According to him the list of surplus teachers was prepared taking into account seniority of the teachers. It was denied that the Appellant could not have been declared as a surplus teacher. It is contended that the Appellant did not join the

school at Phaltan deliberately. The Respondent No.1-Defendant No.2 also filed written statement and contended that the appointment of the Appellant was made on 29th June 1970. According to the Respondent No.1 the Appellant was rightly declared as a surplus teacher. It is contended that the order relieving the Appellant was sent by R.P.A.D. and it was not accepted by him.

5. The learned Trial Judge passed a decree in favour of the Appellant holding that the Appellant was not a surplus teacher in accordance with G.R. dated 14th March 1975 and the Appellant was held entitled to pay from 16th July 1977 as it was held that he continues to be in service. Necessary directions were given to the Respondent No.2-Education Officer. Separate Appeals were preferred in the District Court for challenging the said Judgment and Decree by both the Defendant Nos.1 and 2. The Appellate Court allowed the Appeals and the decree passed by the Trial Court was set aside.

6. The learned Counsel for the Appellant submitted that the school of the Respondent No.1 being an aided school and the Respondent No.2 being Education Officer were bound by the said G.R.dated 14th March 1975. He submitted that the various decisions of the Apex Court relied upon by the Appellate Court were not relevant. He submitted that the said decisions were as regards the enforcibility of grant in

aid code for the schools. He submitted that the Appellant was in the permanent employment of the Respondent No.1. He therefore submitted that if the Trial Court has recorded a clear finding that declaration of the Appellant as a surplus teacher was contrary to the G.R., the Appellate Court could not have disturbed the said finding. He has relied upon the various Judgments of the Apex Court a reference of which will be made at a later stage.

7. The learned Counsel for the Respondent No.1 submitted that the Appellant was absorbed in the Mudhoji High School at Phaltan and he did not join the said school. She submitted that the Appellant was no longer in the employment of the school of the Respondent No.1 and therefore no relief can be granted against the Respondent No.1.

8. I have considered the rival submissions. The Trial Court considered the various provisions of the Government Resolution in paragraph No.10 of its Judgment. The Trial Court considered the oral and and documentary evidence on record and held that the Appellant falls in category 'A' mentioned in the G.R. being a permanent trained teacher. It was held that it cannot be said that he was junior to those who were serving under Respondent No.1 on the date on which G.R. was issued. The learned Trial Judge relied upon the admissions given by the witnesses of the Respondents that the Appellant falls in Category 'A'. The finding of fact

recorded by the Trial Court is that from the evidence of Respondent No.1 it is apparent that the G.R. was wrongly interpreted and instead of including the name of the Appellant in 'A' category, he was included in 'C' category. The learned Trial Judge has also considered the contentions raised by the Education Officer and has come to the conclusion that the report submitted by the Respondent No.1 was not scrutinised by the Education Officer properly. After consideration of all the aspects the learned Trial Judge has recorded a finding that the decision of declaring the Appellant as a surplus teacher was contrary to the direction contained in the G.R. dated 14th March 1975 and that is the reason why the decree of declaration and other consequential reliefs was passed by the Trial Court.

9. The perusal of the Judgment of the Appellate Court shows that the said finding of fact recorded by the Trial Court has not been set aside. In paragraph No.18 of the Judgment of the Appellate Court reliance is placed on several Judgments of the Apex Court in which the view taken is that grant-in-aid Code applicable to the schools is not enforceable. After holding that grant-in-aid Code was not enforceable as it was having no force of law, the Appellate court held that the G.R. dated 14th May 1975, was nothing but an administrative order. The learned Judge held that on the basis of the circular dated 14th March 1975 the civil suit was not maintainable.

10. Even assuming that the order declaring the Appellant as a surplus is an order of termination the same was passed much before coming into force the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and therefore, the suit filed by the Appellant was maintainable.

11. Both the parties relied upon the G.R./circular dated 14th March 1975. Even according to the Respondents the said circular/G.R. is the basis on which the Respondents acted and declared the Appellant as a surplus teacher. Therefore, if the Trial Court found that the action of the Respondents was contrary to the directions contained in the said G.R., the Appellant was entitled to relief of declaration.

12. The Appellate Court held that the action of declaring the Appellant as a surplus teacher does not affect the legal character or legal status of the Appellant. The said view is obviously erroneous. The net result of declaring the Appellant as a surplus was that his employment in the school in which he was permanently appointed was lost and he was directed to join the employment of some other school. Therefore, the Appellate Court was not right when relying upon Section 42 of the Specific Relief Act, 1963 it was held that the suit filed by the Appellant was not maintainable. The substantive prayer for declaring that the Appellant was not a surplus teacher and therefore he continues to be in

service was maintainable under Section 34 of the said Act of 1963 and therefore the suit for claiming such a declaration was maintainable.

13. As stated earlier, there is a categorical finding of fact recorded by the Trial Court that the action of declaring the Appellant as a surplus was contrary to the G.R.. The said findings of fact is not set aside by the Appellate Court on merits. If the said finding is not set aside on merits by the Appellate Court, by virtue of Section 34 of Specific Relief Act, 1963, the Appellant was entitled to declaration as prayed. None of the Respondents have invoked Rule 22 of Order XLIV of Code of Civil Procedure, 1908 before this Court and submitted that the findings of the Trial Court recorded against the Appellant are incorrect or illegal. The approach of the Appellate Court was that the document dated 14th March 1975 was a circular which was not binding on the Respondents and in paragraph Nos.16 to 19 of its Judgment, the Appellate Court has referred to decisions of the Apex Court holding that Grant-in-aid Code was not having any statutory force. The Appellate Court has not given any reason for holding that the G.R. was not binding in as much as the action of the Respondents of declaring the Appellant as a surplus teacher was only on the basis of the G.R. Therefore, finding of the Trial Court that the Appellant could not have been declared surplus cannot be disturbed.

14. The question arises is what relief can be granted to the Appellant. It is not in dispute that as of today the Appellant has reached the age of superannuation. There is no pleading and no evidence is led by the Appellant as to what he has done to mitigate the damage. It is difficult to believe that the Appellant was sitting idle for last several years. The Appellant must have joined some other job and earned income. At this stage, reliance will have to be placed on the Judgment of this Court reported in 1994 Mh.L.J. page No.1809. In the said decision before the learned Single Judge a suit was filed by a teacher for declaration that he continues to be in service and that claim of the management that he has abandoned the service was illegal and improper. The challenge was also to the consequential order of dismissal passed by the employer. A reliance was placed by the learned Single Judge on the Judgment of the Apex Court reported in A.I.R. 1990 S.C. page No.415. As case of the Plaintiff was not covered by one of the three settled exceptions to the normal rule that civil Court cannot enforce contract of personal service, it was held that at best the Plaintiff is entitled to damages on account of the breach of contract of employment. The learned Single Judge considered the aforesaid Judgment of the Apex Court and held that three years salary will be just and reasonable to compensate the plaintiff for illegal termination of her service. There is no reason why the said course should not be adopted in the present case. In this case, there is no evidence to show

that the Appellant remained unemployed all these years. In my view, considering the facts and circumstances of the case, if the Respondents are jointly and severally directed to pay the salary for a period of three years by calculating the same on the basis of last drawn salary of the Appellant on the date on which he was declared as surplus. The said amount will be a reasonable compensation payable to the Appellant. The Respondents will also have to pay interest at the rate 6% from the date of institution of the suit till the payment of the said amount.

15. Hence I pass the following order :

i) Appeal is partly allowed. Impugned Judgments and Decrees passed by the Courts below are quashed and set aside. The same are substituted by following :

"It is hereby declared that the plaintiff was not a surplus teacher as per G.R.dated 14th March 1975. The Defendants will pay compensation equivalent to three years salary to the Plaintiff along with interest thereon at the rate of 6% p.a. from the date of institution of suit till the date of payment of the amount. Calculation shall be made on the basis of the last drawn salary of the Plaintiff on the date of the order declaring him as surplus teacher"

ii) Rest of the prayers made by the Plaintiff are rejected. The Respondents are granted time of 16 weeks to comply with the aforesaid decree. The Appellant will be entitled to proportionate costs through out.

iii) Parties to act upon an authenticated copy of the order.

Judge.